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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,329	01/31/2001	Koji Mikami	FUJZ 18.278	4265
26304	7590	04/22/2005	EXAMINER	
KATTEN MUCHIN ZAVIS ROSENMAN			LEE, PHILIP C	
575 MADISON AVENUE			ART UNIT	
NEW YORK, NY 10022-2585			PAPER NUMBER	
			2154	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/773,329	Applicant(s) MIKAMI ET AL.	
	Examiner Philip C Lee	Art Unit 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment and remarks filed on December 27, 2004.
2. Claims 1-5 are presented for examination.
3. The text of those sections of Title 35, U.S. code not included in this office action can be found in a prior office action.

Claim Rejections - 35 USC 112

4. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - a. Claim language in the following claims is not clearly understood:
 - i. As per claim 1, lines 14-15, it is unclear why the serviceable bandwidth manager transmit the applied threshold value back to the network offerer [i.e. shouldn't the network offerer know the applied threshold value since it has previously transmitted to the serviceable bandwidth manager comprising the network interface (referring to claim 1, lines 6-7)].

Claim Rejections - 35 USC 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mckinnon, III et al, U.S. Patent 6,845,106 (hereinafter Mckinnon) in view of "Official Notice".

7. (Due to claim language that is not clearly understood as cited above under 35 U.S.C. 112, second paragraph, the following rejection is based on the examiner best interpretation of the claim) As per claim 1, Mckinnon taught the invention substantially as claimed comprising:

a customer interface for accepting (col. 9, lines 41-48), from the customer (col. 6, lines 60-66), an available bandwidth of a premium bandwidth control service demand with a higher priority (e.g. bandwidth requested including guaranteed level of network

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access (col. 14, lines 27-39) than a regular bandwidth control service of best effort type (col. 19, lines 6-24),

a network interface for accepting an applied threshold value of a premium bandwidth control service from the network offerer (col. 9, line 65-col. 10, line 15; col. 19, lines 6-24; col. 8, lines 26-30; col. 16, lines 18-20), and

a serviceable bandwidth manager for comparing an available bandwidth of the premium bandwidth control service demand with the applied threshold value to determine whether or not the premium bandwidth control service is available, for notifying the result to the customer through the customer interface, and for demanding that the network should secure a bandwidth in order that the customer who has received the notification of a service permission can start the premium bandwidth control service when the premium bandwidth control service is determined to be available (col. 19, lines 6-67),

the serviceable bandwidth manager transmitting to the network offerer the Service Level Agreement (SLA) in response to a collection demand by the network offerer (col. 17, line 49-col. 18, line 5; col. 19, lines 6-10, 62-65), and adopting a changed Service Level Agreement (SLA) for the determination when the network offerer has changed the applied threshold value (col. 19, lines 56-62).

8. Mckinnon did not specifically teach that the Service Level Agreement (SLA) comprises of applied threshold value. "Official Notice" is taken for the concept of a Service Level Agreement (SLA) specifies the applied threshold value that the network offerer is agree to provide is known and accepted in the art. It would have been obvious

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to one having ordinary skill in the art at the time of the invention was made to include the applied threshold value because by doing so it would improve the reliability of Mckinnon's system to avoid exceeding the system bandwidth threshold causing a system overload.

9. As per claim 3, Mckinnon in view of "Official Notice" taught the invention substantially as claimed in claim 1 above. Mckinnon further taught wherein a service reservation manager is provided which reserves and manages a customer whose premium bandwidth control service demand is rejected by the serviceable bandwidth manger, and which notifies to the customer that the premium bandwidth control service becomes available at that time, based on the applied threshold value (col. 19, lines 34-48, 57-62; col. 20, lines 3-6).

10. As per claim 4, Mckinnon in view of "Official Notice" taught the invention substantially as claimed in claim 1 above. Mckinnon further taught wherein an additional rate manger is provided which manages an accounting rate set according to a remaining bandwidth of the premium bandwidth control service and forming an additional rate calculation standard, and which notifies the accounting rate corresponding to the remaining bandwidth of the premium bandwidth control service at a time when a service is demanded by the customer to the serviceable bandwidth manager, while the premium bandwidth control service is offered (e.g. invitation) (col. 19, lines 43-45; col. 14, line 64-col. 15, line 3).

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11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mckinnon in view of "Official Notice" as applied to claims 1 above, and further in view of Ebata et al, U.S. Patent 6,693,533 (hereinafter Ebata).

12. As per claim 2, Mckinnon in view of "Official Notice" did not teach a timer for monitoring and demanding release of the premium bandwidth control service. Ebata taught a similar system wherein a timer manager is provided which monitors an applied time of the premium bandwidth control service, and which demands a release of the premium bandwidth control service from the serviceable bandwidth manager, when the applied time has elapsed (col. 20, lines 40-61).

13. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Mckinnon and Ebata because Ebata's system of monitoring the applied time of the premium bandwidth control service and demanding a release of the premium bandwidth control service when the applied time has elapsed would increase the fairness of Mckinnon's system by allowing the premium bandwidth control service to be allocated to another customer after the applied time has elapsed.

14. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mckinnon in view of "Official Notice" as applied to claims 4 above, and further in view of Kirkby et al, U.S. Patent 6,671,285 (hereinafter Kirkby).

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15. As per claim 5, Mckinnon in view of "Official Notice" did not teach the accounting rate changes with the availability of the bandwidth. Kirkby taught the additional rate manager changes the accounting rate to a new accounting rate considering the bandwidth for the accounting (col. 3, lines 41-52).

16. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Mckinnon and Kirkby because Kirkby's teaching of changing the accounting rate according to the changing bandwidth would increase the flexibility in Mckinnon's system by allowing a system to dynamically charges a user according to the user's demand for bandwidth to maximum revenue.

17. Applicant's arguments with respect to claims 1-5, filed 12/27/05, have been fully considered but are not deemed to be persuasive and are moot in view of the new grounds of rejection.

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

El-Fekih et al, U.S. Patent Application Publication 2002/0039352, disclosed a method of configuring threshold value of a Service Level Agreement (SLA) by a service provider.

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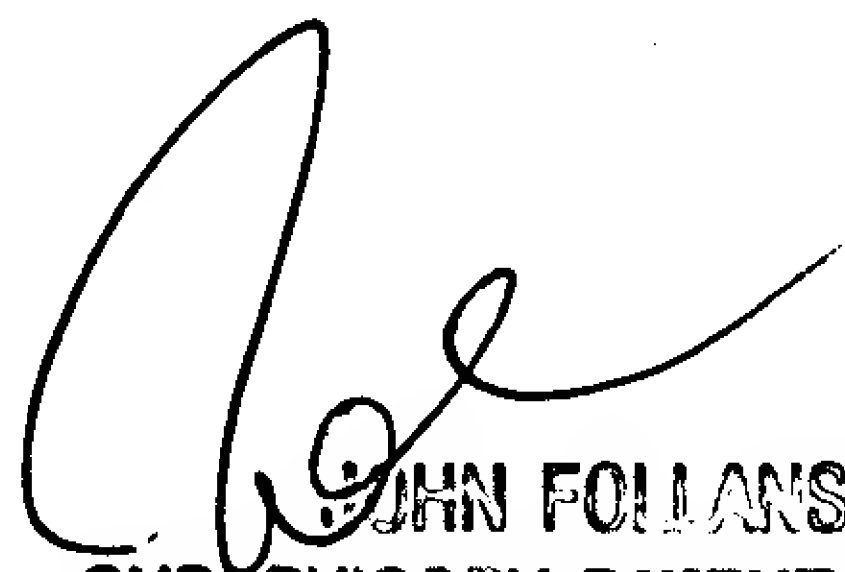
Adriaans et al, U.S. Patent 6,311,175, disclosed a method of defining thresholds (i.e. SLA) for a dynamic learning model.

Bartz et al, U.S. Patent 6,701,342, disclosed a method of real-time monitoring and threshold comparison of Service Level Agreement compliance.

Mangipudi et al, U.S. Patent Application Publication 2004/0162901, disclosed a method of monitoring the threshold of a Service Level Agreement metric.

20. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Lee whose telephone number is (571) 272-3967. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Philip Lee


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